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SCO Group Slaps IBM with \$1B Suit

March 6, 2003

By Peter Galli, eSeminars

The SCO Group, which holds all the intellectual property rights to the Unix operating system, on Thursday filed suit against IBM for more than \$1 billion in the State Court of Utah alleging that IBM made "concentrated efforts to improperly destroy the economic value of Unix, particularly Unix on Intel, to benefit IBM's new Linux services business."

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The SCO filing, which eWEEK reported in an exclusive report last week, said that IBM originally entered into its Unix license agreement with AT&T in February 1985 in order to produce the AIX operating system. These agreements require that the Unix software code be held in confidence, and bar its unauthorized distribution or transfer.

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As a result of IBM's unfair competition and the resulting marketplace injury, SCO is requesting damages in an amount to be proven at trial, but no less than \$1 billion, together with additional damages through and after the time of trial, according to the filing.

SCO is also demanding that IBM cease what it refers to as anti-competitive practices based on specific requirements sent in a notification letter to IBM. If the requirements are not met, SCO will have the authority to revoke IBM's AIX license 100 days following the receipt of SCO's letter.

In 1995, SCO purchased the rights and ownership of UNIX and UnixWare that had been originally owned by AT&T. This included source code, source documentation, software development contracts, licenses and other intellectual property that pertained to UNIX-related business. SCO became the successor in interest to the UNIX software licenses originally licensed by AT&T Bell Laboratories to all UNIX distributors, including Hewlett-Packard Co., IBM, Silicon Graphics, Sun Microsystems Inc., and many others.

"SCO is in the enviable position of owning the UNIX operating system," said Darl McBride, president and CEO, SCO, in an interview with eWeek Thursday. "It is clear from our stand point that we have an extremely compelling case against IBM. SCO has more than 30,000 contracts with UNIX licensees and

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upholding these contracts is as important today as the day they were signed."

McBride said the bottom line was that SCO owned the source code to Unix and the right to that operating system. IBM had taken AIX and made it available to the Linux community in an unlawful way.

"IBM has been happily giving part of the AIX code away to the Linux community, but the problem is that they don't own the AIX code," he said. "And so it's a huge problem for us. We have been talking to IBM in this regard since early December and have reached an impasse. This was thus the only way forward for us."

The Unix contracts held by SCO were "extremely powerful and one of the remedies under the contract is that we have the ability to revoke their AIX license," he said. "We have to give them 100 days notice before we do that. If they don't cure the problems we have then we will revoke their license. We sent them a letter today informing them of that, so the 100-day clock has started."

Sun Microsystems, whose Solaris operating system is based on Unix, moved quickly Thursday to assure its customers that its licenses were all in order. John Loiacono, the vice president of Sun's operating platforms group, told eWeek on Thursday that the company had assured its customers and partners that it has licensing rights to Unix, for both SPARC and the recently available x86 systems.

"As part of a series of licensing agreements, Sun acquired rights to make and ship derivative products based on the intellectual property in Unix. This forms the foundation for the Solaris operating system that ships today.

"Sun's complete line of Solaris and Linux products -- including Solaris for the SPARC and x86 platforms, Trusted Solaris, the highly secure operating system, and Sun Linux - are all covered by Sun's portfolio of Unix licensing agreements. As such, Solaris and Sun Linux represent safe choices for those companies that develop and deploy services based on Unix systems," he said.

IBM corporate spokesman Bill Hughes told eWEEK on Friday morning that the company had not yet seen the lawsuit and was thus unable to comment on it at his time. A spokeswoman for Linux distributor Red Hat told eWEEK recently that the company had not been contacted by SCO with regard to any violations of its IP or other rights. A Microsoft spokesman declined immediate comment.

SCO, formerly Caldera International Inc., recently created the SCOsouce division to create new licensing programs and products for its intellectual property. That move followed news last month that the firm was planning to make some users pay for some Unix software they were running, unlicensed, on Linux. The first deliverable from SCOsouce was the licensing of its Unix shared libraries under a new product license called SCO System V for Linux. That product lets Linux customers run Unix applications, originally written for SCO OpenServer and SCO UnixWare, under Linux in an Intel environment.

"There has never been a mechanism in place to license the libraries to individuals and companies until now. In fact, the SCO OpenServer and UnixWare licenses expressly said that the libraries could not be used outside of those two operating systems," McBride said at the time.

At that time he also confirmed to eWeek that the company had hired high-profile attorney David Boies and his legal firm to investigate whether Windows, Mac OS X, Linux and versions of BSD infringed on the Unix intellectual property it owned. As SCO was concerned about a number of other issues relating to its IP, it had approached Boies to deal with the matter.

While McBride said SCO expects much of the \$10 million in licensing revenue to be raised amicably, it was willing to litigate in order to enforce its IP and other rights.

The company had received a lot of positive response to its SCOsouce initiative, including calls from companies who were concerned they could be infringing on its intellectual property. "We have very positive programs for working through these issues as they arise.

"Some 95 percent of the companies we are in discussions with are co-operating well, but there are a

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handful of cases where the discussions are not as amicable," he said, declining to be more specific about which companies were being uncooperative.

While SCO expected to get at least \$10 million in revenue from SCOsorce-related activities in the current quarter, "we cannot predict at this point what happens to that revenue stream in coming quarters. It's very early on in the process," he said.

But it appears that more legal action could well be on the cards going forward as McBride told eWeek that the unlicensed use of its Unix shared libraries was just the "tip of the iceberg as there is so much IP we're dealing with here, ranging from copyright, trade secrets, patents, source code and licensing issues.

"Because this range of IP-related issues is so broad-based and there is such a wide-range of players involved, we're just making sure we move forward very sure-footedly. We don't want to start running before we can walk. We're trying to take things in the right order," he said.

eWeek has also learned that a market research company is conducting a survey among open source and Linux shops to gauge how they would feel and react if SCO pursues legal action against those companies it believes are violating its intellectual property and technology rights. The president of an exclusively Linux/Open Source shop told eWeek last week that he had recently participated in a 20 minute phone survey that began with a statement to the effect that a company named SCO was pursuing legal remedy to protect its intellectual property.

The researcher had begun with a statement to the effect that a company named SCO was pursuing legal remedy to protect its intellectual property. "I had my suspicions, but as soon as they asked my familiarity with, respect for and opinion of, Red Hat and IBM, I knew what was going on. They also asked me about Sony and Ford - I believe several automotive components run on Linux," he said.

The next set of questions, the researcher said, had to do with his understanding of intellectual property laws. They were followed by questions regarding several aspects of intellectual property rights – from music to software and copyrighted printed materials. The questions then moved on to how his opinion of a company would be affected if certain statements were used.

"And all of them had to do with the way to spin public perception of a company that is suing a lot of other popular companies for using a product that helps them make money, but for which they refuse to pay the company that produced the original product," he said.

"They spun it about 15 different ways, using different verbiage and angles," he said. "They even went as far as asking me if I'd think more highly of the litigious company if they donated a portion of the funds generated from lawsuits to some charity."

McBride said his company had nothing to do with the market research.

"We did a channel survey recently to see where our solution partners were, what platforms they were running on, and what applications they were running. I don't remember any questions like these even being part of that survey. This latest survey wasn't commissioned by us, I can tell you that," he said.

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